

### Remarks

Claims 1-6, 8, 10-11, 14, 16, and 18-20 have been amended. Claims 30-34 have been added. Claims 1-34 are currently pending in the case.

#### I. Claim Objection

Claim 14 has been amended to depend from claim 12 and respectfully, an antecedent basis has now been provided.

#### II. Rejection of Claims 1-5, 8-11, 13, 16-18, 21-25, and 27 under 35 U.S.C. 102(b) based on Landis '715 patent

Originally filed claims 1-5, 8-11, 13, 16-18, 21-25, and 27 have been rejected under 35 U.S.C. 102(b) based on the Landis '715 patent. Claim 1 has been amended to more particularly define the invention in one or more embodiments and now specifies:

1. An apparatus comprising
  - a nose piece comprising
    - a body portion;
    - a first hollow tube protruding out from the body portion; and
    - a second hollow tube protruding out from the body portion;
  - a first device for attaching the first and second hollow tubes to an individual's head;
  - wherein a first end of the first hollow tube can be inserted into a first nostril of an individual;
  - wherein a first end of the second hollow tube can be inserted into a second nostril of the individual;
  - wherein air can flow through the first hollow tube into the first nostril and through the second hollow tube into the second nostril; and
  - wherein the body portion is flexible.

In the present application in one embodiment, a first hollow tube 16 and a second hollow

tube 26 protrude out from a portion or body portion 34. (Present application, Fig. 1A). The body portion 34 (along with most if not all of the nose piece 10) is typically made of light, pliable synthetic polymer, such as polyvinyl chloride and silicone rubber. (Present application, pg. 7, paragraph 2). The flexibility of the nose piece 10 allows the nose piece 10 to adapt to the contours of a person's face as shown by Fig. 5.

The examiner incorrectly states that Landis discloses a body portion 48 from which first and second hollow tubes protrude. The component 48 in Landis is really two components or two separate bellows or pleats, which for purposes of description could be identified as bellows 48a and bellows 48b. (See Exh. A) Bellows 48a is part of delivery element or tube 120. (Exh. A and Landis, Col. 7, Ins. 44-45, Fig. 5) Bellows 48b is part of delivery element or tube 122. (Id.). Tubes 120 and 122 don't both protrude out from bellows 48a. Tubes 120 and 122 don't both protrude out from bellows 48b.

Tubes 120 and 122 do both protrude out from portion 44 or 46. (Landis, Figs. 4 and 5). However, there is no disclosure or suggestion in Landis that portion 44 or 46 should be flexible. In fact, Landis appears to teach against a flexible body portion by stating that the plenum chamber 14 should be made from a substantially rigid material. (Landis, col. 6, Ins. 29-31).

Claim 1 is submitted to be allowable for at least the above reasons. Claims 2-5, 8, 9, and 11-15 are dependent on claim 1 and are also submitted to be allowable for at least these reasons.

Claim 16 has been amended and now includes the limitation of originally filed claim 18:

16. A method comprising the steps of
  - attaching first and second hollow tubes to an individual's head;
  - inserting a first end of the first hollow tube into a first nostril of an individual;
  - and inserting a first end of the second hollow tube into a second nostril of the individual;
  - and wherein the first and second hollow tubes protrude out from a body portion of a nose piece and wherein the first and second hollow tubes are attached to the individual's head through the nose piece, which is attached at or near the upper lip of the individual; and
  - wherein the body portion of the nose piece is flexible.

As specified with respect to claim 1, Landis does not disclose or suggest a flexible body portion from which first and second hollow tubes protrude. Claim 16 is submitted to be allowable for at least these reasons. Claims 17-18 and 21-29 are dependent on claim 16 and are submitted to be allowable for at least the same reasons.

**III. Rejection of Claims 6-7, 12, 14-15, 19-20, 26, 28-29 under 35 U.S.C. 103 based on Landis**

Claim 6 has been amended to more particularly define the present invention and to be independent and specifies:

6. An apparatus comprising  
a nose piece comprising  
a body portion;  
a first hollow tube protruding out from the body portion; and  
a second hollow tube protruding out from the body portion;  
a first device for attaching the first and second hollow tubes to an individual's head;  
wherein a first end of the first hollow tube can be inserted into a first nostril of an individual;  
wherein a first end of the second hollow tube can be inserted into a second nostril of the individual;  
wherein air can flow through the first hollow tube into the first nostril and through the second hollow tube into the second nostril; and  
wherein the nose piece is further comprised of a flap portion.

The present invention in one or more embodiments, provides a nose piece 10 including a flap portion 36. (Present application, Fig. 1A, Fig. 5, pg. 9, second paragraph). The flap portion 36 can be taped above the upper lip of an individual, such as an infant. (Id.).

Landis does not provide a flap portion. Landis does not suggest a flap portion. A suggestion is required under M.P.E.P. 706.02(j) citing In re Vaack, 947 F.2d 488 (Fed. Cir. 1991). In addition, the Landis support strap 26 (Landis, Fig. 1) is far more intrusive than the flap portion 36 (Present application, Fig. 5). The Landis support strap 26 is used in conjunction with the

headband 24 and in order to put the combination on or take the combination off, one has to undesirably lift the patient's head. In addition, hats and headbands frequently slip off the patient's head, and support straps, such as the Landis support strap, frequently loosen and will shift as the head band to which they are anchored slip off the patient's head. These common means of securement have been proven inadequate.

The present invention, in one or more embodiments does not require the use of headbands, hats or straps (Present application, pg. 4, paragraph 2) and therefore does not require the undesirable lifting of the patient's head and more importantly, it provides a way of securely attaching the breathing apparatus to the patient's head. This is accomplished, in one or more embodiments, by the use of adhesive strips, because adhesive strips applied on the skin are generally secure and reliable.

In addition, it is standard nursing practice to change the position of an individual, such as from side to side and from supine to prone, at least partly because keeping an individual in one position carries many complications. The flap portion 36, in one or more embodiments of the present invention, provides a reliable means of securement, especially when changing the position of an individual such as from side to side and from supine to prone. In contrast, when an individual (particularly an infant) uses the device disclosed in Landis, changing the position of the individual may easily cause the prongs of the nose piece in Landis to slip out of the nostrils. If the individual (particularly an infant) is using the Landis device and the individual is positioned on his abdomen, the prongs of the nose piece can slip out of the nostrils due to gravity.

For at least the above reasons, claim 6 and dependent claims 7, 10, 30-32 are respectfully submitted to be allowable.

Claim 19 has been amended to be an independent claim and specifies:

19. A method comprising the steps of  
attaching first and second hollow tubes to an individual's head;  
inserting a first end of the first hollow tube into a first nostril of an individual;

and inserting a first end of the second hollow tube into a second nostril of the individual;  
and wherein the first and second hollow tubes protrude out from a body portion of a nose piece and wherein the first and second hollow tubes are attached to the individual's head through the nose piece, which is attached at or near the upper lip of the individual; and  
wherein the nose piece includes a flap portion.

As previously discussed, Landis does not disclose or suggest a flap portion. Claim 19 is submitted to be allowable for at least the reasons previously discussed regarding the flap portion. Claim 20 is dependent on claim 19 and is submitted to be allowable for at least the same reasons.

#### **IV. New Claims 30-34**

Claims 30-34 have been added. Claims 30-32 are dependent on claim 6 are submitted to be allowable for at least the same reasons. In addition, claim 30 specifies that the flap portion is flexible and claims 31 and 32 specify a particular type of material for the flap portion. None of these limitations are disclosed or suggested by Landis.

Claim 33 specifies an apparatus for supplying air, which includes means for attaching a first device and a means for attaching a second device. Neither the means for attaching the first device nor the means for attaching the second device circle an individual's head in order to attach the first or second device. Claim 34 specifies that the means for attaching the first device is located substantially only at or near the forehead of an individual while the means for attaching the second device is located substantially only at or near the upper lip of the individual. None of these limitations are disclosed or suggested by Landis.

#### **V. Conclusion**

Claims 1-34 are respectfully submitted to be in a condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested. A credit card payment

form for \$133.00 was previously provided and previously charged by the USPTO for extra claims fees (2 independent claims x44.00 = \$88.00; 5 extra total claims x9.00=45.00).

Respectfully submitted,



Walter J. Tencza Jr.  
Reg. No. 35,708  
Suite 3  
10 Station Place  
Metuchen, N.J. 08840  
(732) 549-3007  
Fax (732) 549-8486